BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion Energy Ohio for Approval of Changes in Rules and Regulations	))))	Case No. 17-0820-GA-ATA

THE EAST OHIO GAS COMPANY D/B/A DOMINION ENERGY OHIO'S MEMORANDUM CONTRA THE SECOND APPLICATION FOR REHEARING OF THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

I. INTRODUCTION

On October 13, 2017, the Office of the Ohio Consumers' Counsel (OCC) filed an application for rehearing in this case, which the Commission denied on February 7, 2018. On March 9, OCC filed a second application for rehearing. In accordance with Rule 4901-1-35(B), The East Ohio Gas Company d/b/a Dominion Energy Ohio (DEO or the Company) files its memorandum contra OCC's second application for rehearing.

II. ARGUMENT

OCC's second rehearing application focuses entirely on issues raised by the Supreme Court of Ohio's recent decision in the case, *In re Rev. of Alternative Energy Rider Contained in Tariffs of Ohio Edison Co.*, Slip Opinion No. 2018-Ohio-229. OCC refers to this decision as "*FirstEnergy*," and for ease of reference, so will DEO.

Although DEO appreciates the concern behind its application for rehearing, OCC does not provide any basis for revisiting the decisions approving DEO's application. DEO's rider and cost-recovery procedures do not implicate any of the concerns raised by *FirstEnergy*. Even assuming that *FirstEnergy* requires tariffs to include language authorizing later adjustments, DEO's tariff already includes such language, and the long-standing review process employed by the Commission ensures that customers will receive any credits that are due them.

A. DEO's tariff already includes *express* language resolving OCC's concern regarding the crediting of the rider.

Under DEO's application, capacity costs associated with the Risberg Line are to be recovered through Transportation Migration Rider – Part B (TMR-B). These costs are subject to offsetting credits if service on the line results in incremental revenue to DEO.

OCC's concern is to ensure that these credits can actually be applied to reduce the rider. According to OCC, "the PUCO should take action to ensure that consumers may receive any credits that are due them under the Order and Rehearing Entry" by "requir[ing] Dominion to include tariff language" that addresses this issue. (OCC 2d Rehg. at 2.) OCC believes this is necessary to account for the *FirstEnergy* decision. (*See id*. at 8.)

DEO's tariff, however, already includes language expressly authorizing adjustments to the rider, which would include those necessary to provide credits for incremental revenue. TMR-B's introductory language states that charges collected under the rider are "based on the cost of operational balancing *and other reconciliation adjustments*." (Emphasis added.) "Reconciliation adjustments" are intended to capture any true-ups and corrections, including those associated with the annual audit of TMR-B recoveries. *See, e.g.*, Case No. 17-219-GA-EXR, Entry ¶ 17 (Apr. 19, 2017) (ordering audit of rider calculations for year ending April 30, 2017). Adding a statement that amounts collected under TMR-B are subject to refund based on the Commission's review would be redundant and unnecessary in light of the tariff provisions and review processes that have been in place since that rider's inception.

Once a quarter, DEO updates TMR-B, and once a year, the Commission orders an audit of the preceding 12 months of recoveries. The quarterly updates routinely reflect credits associated with "cash outs" of supplier or customer imbalances as well as any capacity release activity that occurred during the preceding quarter. The audit typically confirms that DEO has

correctly administered and calculated TMR-B. But if a contrary conclusion were reached—including one that DEO had failed to account for incremental revenue—the correction would be flowed through prospectively. TMR-B is not a blank check, and DEO has never considered it to be. The tariff language reflects that.

Even assuming that the *FirstEnergy* decision now requires language in DEO's tariffs that authorize the return of credits or other reconciling adjustments, the language already exists, and the operation and Commission-ordered audits of TMR-B will ensure that they are properly reflected in the rate.

B. This tariff language reflects DEO's long-standing commitment to permit the review and reconciliation of recoveries under TMR-B.

The tariff provisions discussed above reflect the fact that DEO has expressly agreed in prior cases, and again in this case, to the annual review and reconciliation of costs and credits recovered under TMR-B.

Cost recovery procedures under TMR-B were initially proposed in Case No. 05-474-GA-EXM, and then again in Case No. 07-1224-GA-EXM. In both cases, DEO recognized that in administering the rider, review of prior-year expenses and credits would be necessary, and the Company specifically acknowledged that such prior-year review could result in credits to the rider. (*See, e.g.*, 07-1224 Appl., Appx. A at 11 (Dec. 28, 2007) (TMR-B adjustments could require "either a debit or a credit to expense depending on the nature of the transaction").) DEO also agreed that the Company's "accounting of [TMR-B] costs and . . . recoveries will be reviewed as part of an annual financial audit." (*Id*.)

This annual audit and reconciliation process would also apply to Risberg Line recoveries and credits under TMR-B. In its application, DEO represented that it "will maintain records necessary to permit Staff, *auditors*, and other interested parties to verify that incremental revenue

has been appropriately determined and credited." (17-820 Appl., Exh. C-2 & C-3 (emphasis added).) And the Commission likewise confirmed that "Staff will have the ability to review the records pertaining to the crediting of incremental revenues to ensure that they have been appropriately determined and credited," and that "review of the costs and credits associated with the acquisition of additional contract pipeline capacity will occur at a later date." Entry on Rehearing ¶ 19 (Feb. 7, 2018.)

C. Because the tariff authorizes reconciliation adjustments, and because DEO has agreed to an annual review and adjustment process, *FirstEnergy* does not apply.

For these reasons, any concerns created by the *FirstEnergy* decision are inapplicable here. DEO's tariff expressly contemplates later adjustments, and DEO has submitted to an annual audit process for a number of years now. So if a TMR-B audit identified incremental revenue that had not been credited during the year under review, there would be no retroactive-ratemaking argument under *FirstEnergy* if DEO were ordered to apply an appropriate credit going forward.

Although it is a moot point, DEO would observe that *FirstEnergy*'s applicability here is doubtful. That decision concerned a rider markedly different in operation than TMR-B. In that case, as the Court understood the procedure, the utility's rate was filed *and* deemed approved a month later "unless otherwise ordered by" the Commission. *See FirstEnergy*, ¶ 18. The Court effectively concluded that the opportunity to institute proceedings reviewing costs within the rider was limited to that one-month period. In contrast, TMR-B recoveries are annually audited, and this audit is then subject to review, comment, and Commission action if need be, including

reconciliation adjustments. TMR-B is not only subject to review; it *is* reviewed. The ratemaking structure reviewed in *FirstEnergy* is *not* the ratemaking structure applicable here.[1]

To be clear, DEO is not suggesting that retroactivity concerns could not be implicated here. For example, the reasonableness of DEO's decision to reserve the Risberg Line capacity, having been affirmed by the Commission, should not be subject to second-guessing later. And once an annual review proceeding is *concluded* (including the Commission's acceptance of the audit report and implementation of any adjustments), the audited year's activity should *thereafter* be deemed approved. But DEO fully concedes that until the annual audit process has been completed, there has been no final review or approval of the rate, and there would be no retroactive-ratemaking concerns under *FirstEnergy* if the Commission ordered an adjustment based on the audited year's activity.

D. DEO's other migration rider, TMR-A, does not implicate any of the concerns stated in OCC's rehearing application.

Finally, OCC's pleading includes a footnote raising the possibility that DEO's other rider recovering migration costs (Transportation Migration Rider – Part A, or TMR-A) should also be subject to modification. According to OCC, "if [TMR-A] will be periodically updated and subject to after-the-fact reviews," it should be made subject to refund. (OCC 2d Rehg. App. at 7 n.27.))

While DEO understands the potential for confusion, any suggestion that the Commission should address TMR-A should be rejected because OCC's stated concerns are not applicable to that rider due to the manner in which it operates. To begin with, TMR-A is not subject to a

[1] *FirstEnergy* was decided 3-3-1. DEO appreciates that the two plurality decisions include *dicta* supporting various rationales for prohibiting a refund in that case, some of potentially broad applicability. But the holding of the case is what controls, and the holding must be limited to the kind of ratemaking mechanism that was before the Court. If ever concerns about *dicta* were valid, they would be valid here where no single opinion commanded a majority.

periodic review in the same manner as TMR-B. Nor is TMR-A subject to a regular update process, as is either TMR-B or the rider at issue in *FirstEnergy*. Instead, TMR-A recoveries are merely applied as a credit to costs that would otherwise be recovered through TMR-B, and the annual audits ordered by the Commission ensure that the proper crediting occurs. Secondly, DEO is not proposing to recover Risberg Line costs through TMR-A, so any concern regarding the crediting of incremental revenues does not apply. The only change proposed to TMR-A in this case is to make clear that any customer assigned Risberg Line capacity need not also pay capacity costs under TMR-A. That change is merely to avoid the possibility that individual customers will be charged twice for capacity costs, and it does not implicate any of the concerns raised by OCC on rehearing.

III. CONCLUSION

For the foregoing reasons, DEO respectfully requests that the Commission deny OCC's second application for rehearing.

Dated: March 19, 2018

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served by electronic mail to the following persons this 19th day of March, 2018:

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Summary: Memorandum Contra Ohio Consumers' Counsel's Second Application for Rehearing electronically filed by Ms. Rebekah J. Glover on behalf of The East Ohio Gas Company d/b/a Dominion Energy Ohio